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No. 94-1511

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

SAMUEL LEWIS, et al.,

Petitioners,

vs.

FLETCHER CASEY, JR., et al.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF *AMICUS CURIAE* OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Does *Bounds* v. *Smith*, 430 U. S. 817 (1977) entitle prisoners to legal assistance superior to that enjoyed by average citizens?

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INTEREST OF *AMICUS CURIAE*

The Criminal Justice Legal Foundation (CJLF)[1] is a non-profit California corporation organized to participate in litigation relating to the criminal justice system as it affects the public interest. CJLF seeks to bring the constitutional protections of the accused into balance with the rights of victims and of society to rapid, efficient, and reliable determination of guilt and swift execution of punishment.

Running a prison is an extraordinarily difficult task. Prison administrators oversee a population of anti-social and violent people. The prisoner's diet, clothing, shelter, and medical needs must be attended to. Furthermore, the administrators must keep the prisoner from harming the outside world, the prison staff, or his fellow inmates. The unwarranted attention of the federal courts can make this already difficult job impossible.

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1. Both parties have consented to the filing of this brief.

The decision below places needless, heavy burdens on our prison system. It wastes prison resources, strips administrators of necessary discretion, encourages wasteful, disruptive prisoner litigation, and entitles prisoners to greater privileges than the average citizen. This is contrary to the interests CJLF was formed to protect.

SUMMARY OF FACTS AND CASE

On January 12, 1990, 22 prisoners of the Arizona Department of Corrections ("ADOC") filed a class action suit under 42 U. S. C. § 1983 in the United States District Court for the District of Arizona. *Casey* v. *Lewis*, 43 F. 3d 1261, 1265 (CA9 1994). One of the many claims was that prison officials unconstitutionally denied the prisoners access to the courts. *Ibid.*

On November 12, 1992, after a three-month bench trial, the District Court ruled that the ADOC's policy for assuring prisoners' access to the courts was unconstitutionally inadequate. It found inadequate: "contents of the library; the access to libraries; the legal assistance for prisoners who are illiterate or who do not speak English; library staffing; the indigency standard for receiving free legal supplies; the photocopying policy . . . ; and restrictions on inmates' telephone calls to their attorneys." *Ibid.* After consulting with a Special Master, the District Court issued a permanent injunction requiring the ADOC to implement the plan developed by the Master to remedy the allegedly inadequate access. *Id.*, at 1265-1266.

The plan was very detailed. It covered such items as: the types of books to be bought by the libraries; what times of the day the libraries would be open; the minimum hours each library was open; notification of schedule changes; the qualifications of librarians; the contents of forms regarding library use; the conduct in the libraries that can be prohibited; the check-out system; the libraries' noise level and how to reduce it; the number, training, and workload of legal assistants; the maximum mark-up for legal supplies sold by the prison; the standard of indigency; and the number of pens, pencils, typing paper, legal pads, file folders, and regular envelopes to be provided to indigents. See *id.*, at 1272-1280 (Appendix A).

The Ninth Circuit affirmed the bulk of the District Court's order. It found that *Bounds* v. *Smith*, 430 U. S. 817 (1977) mandated the extensive relief proscribed by the District Court. See *Casey*, 43 F. 3d, at 1266.[2]

SUMMARY OF ARGUMENT

The Ninth Circuit established a dangerous precedent when it required Arizona to provide its prisoners with a greater level of legal services than what is available to the average citizen. If upheld, this precedent would cost much more than the expense of improving the law libraries of Arizona prisons.

Court-ordered luxuries for prisoners eat away at the glue that holds society together. A valid, functioning criminal justice system is essential to civilized society. In order for the criminal justice system to function, we must believe that criminals are appropriately punished for their crimes. When courts provide prisoners with benefits not available to the average citizen, public confidence that criminals get their just deserts diminishes, threatening the social order.

Special treatment of prisoners has further costs. Running a prison is at best very difficult. Once courts start mandating more than basic human needs for prisoners, judicial management of prisons will increase at the expense of the discretion prison administrators need to do their job. The experience of the Texas prison system demonstrates the dangers of such intrusive micromanagement.

Giving prisoners too much access to courts undermines the prison system. As the state is required to bear more and more of the prisoner's litigation, the right of access becomes a subsidy to litigation. This has turned litigation from an avenue of defending basic rights to a leisure activity for prisoners. This undermines administrative authority, creates considerable costs

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2. The Ninth Circuit affirmed all of the District Court's judgment except for its decision to award costs and expenses of the Special Master without giving the ADOC the opportunity to object, *id.*, at 1272, a restriction on photocopying pricing, *ibid.*, and a requirement that the ADOC provide electric typewriters to indigent prisoners. *Id.*, at 1271.

to the state, and undermines the faith of citizens that criminals are being properly punished.

The right to libraries found in *Bounds* v. *Smith*, 430 U. S. 817 (1977) is very limited. The right to access cases before *Bounds* meant only to remove barriers to litigation by prisoners; they were not intended to make the states actively encourage prisoner suits.

While *Bounds* placed a greater affirmative duty on the states than did previous decisions, this duty was very limited. Its right of libraries was not for the purpose of general civil litigation, but only to allow prisoners to file habeas corpus and civil rights actions. The state's duty was further limited by the fact that it merely had to give prisoners the tools to present fundamental claims to the courts; *Bounds* was not intended to guarantee competent prosecution of the prisoner's claim or to blaze new trails in the law.

The decision below violated *Bounds*. By ordering Arizona to provide both libraries and legal assistance to prisoners, the Ninth Circuit directly contradicted the holding of *Bounds* that either a library *or* legal assistance satisfied the right to access.

The Ninth Circuit's micromanagement of Arizona prisons also contradicted this Court's precedents. One constant of the prisoner rights cases is a tradition of deference to the discretion of administrators to conduct the day-to-day affairs of the prison. The Ninth Circuit's exceptionally intrusive order dangerously contravenes this principle.

The decision below also excessively accommodated the prisoners' interests. The provisions for legal assistance it ordered are more lavish than that available to the average citizen. This excess stems from a misperception of what *Bounds* requires. The Ninth Circuit believes *Bounds* is a right to effectively litigate claims; *Bounds* is only concerned with giving prisoners the ability to present basic claims to the courts.

The confusion in the lower courts over what *Bounds* requires demonstrates that *Bounds* must be clarified. This Court should clarify that *Bounds* is a very limited right to bring basic claims to the attention of the courts, that the oversight of Special Masters should only be invoked under extreme circumstances,

and that federal courts should defer to the judgment of prison administrators barring a finding of bad faith.

ARGUMENT

I. The Constitution does not require states to treat its prisoners better than law-abiding citizens.

The present case is about much more than the cost to Arizona of buying Pacific Reports for its prisoners. The Ninth Circuit has engaged in an extreme accommodation of prisoner interests under *Bounds* v. *Smith*, 430 U. S. 817 (1977), giving Arizona's prisoners considerably greater access to the courts than that possessed by the average citizen. See *post*, at 8-21. This sets a very dangerous precedent for both America's prisons and society at large.

Court-ordered prison libraries are one part of a whole mosaic of judicial interference with prison administration and must be considered within this larger picture. Although libraries will, of course, not prevent prisons from punishing, the decision below improperly chips away at prisoners' punishment, disrupting the calculus of just desert. Furthermore, this expensive litigation subsidy will make the already difficult job of running prisons that much more onerous.

The danger of the decision below is best appreciated in a context larger than the contents of prison libraries. Therefore, Part I A of this brief will discuss society's keen interest in having prisons that punish adequately. Part I B will demonstrate that excessive accommodation of prisoner interests is dangerous to prisons. The relevance of the Ninth Circuit's decision to these points will be shown in Part I C.

A. Societal Needs.

The criminal law is part of the glue that holds society together. Protecting its citizens from crime is a core feature of any civilized government. See *Illinois* v. *Gates*, 462 U. S. 213, 237 (1983). If people are not protected from crime they are not free. Therefore, the states, the main enforcement arm of the

criminal law, *Patterson* v. *New York*, 432 U. S. 197, 201 (1977), must be given great discretion in their fight against crime.

> "The rights of the States to develop and enforce their own judicial procedures, consistent with the Fourteenth Amendment, have long been recognized as essential to the concept of a healthy federalism. Those rights are today attenuated if not obliterated in the name of a victory for the 'struggle for personal liberty.' But the Constitution comprehends another struggle of equal importance and upon our shoulders the burden of maintaining it—the struggle for law and order. I regret that the Court does not often recognize that each defeat in that struggle chips away at the base of that very personal liberty which it seeks to protect." *Fay* v. *Noia*, 372 U. S. 391, 446-447 (1963) (Clark, J., dissenting), overruled in *Coleman* v. *Thompson*, 501 U. S. 722, 749-750 (1991).

The criminal law protects society by punishing transgressors. See 1 W. LaFave & A. Scott, Substantive Criminal Law § 1.2(e), at 14 (1986). Punishment serves two important purposes—preventing people from committing crime through deterrence or incapacitation, see *ibid.*, and expressing society's moral indignation at crime.[3] See *People* v. *Roberts*, 2 Cal. 4th 271, 316, 826 P. 2d 274, 298 (1992); *Gregg* v. *Georgia*, 428 U. S. 153, 183 (1976) (lead opn.).

For either purpose to work, punishment must actually punish. While incapacitation may not require punishment, deterrence must be punitive. If prison is to deter people from committing crime, it must be perceived to be punitive. See 1 LaFave & Scott, *supra*, § 1.5(a)(3), at 33, n. 2, quoting F. Zimring, Perspectives on Deterrence 3 (1971).

Changing the conditions inside prison will thus affect the level of crime. Making prison life easier will lower the cost of committing crime, while lowering the prison's standard of living will make the criminal's vocation less rewarding. Such changes inevitably influence the level of crime.

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3. Rehabilitation is also a goal of sentencing, of course, 1 LaFave & Scott, *supra*, § 1.5(a)(3), at 32-33, but it has proved an elusive one, and it is made even more difficult by the decline in prison discipline wrought in the past by excessive judicial interference. See *post*, at 11-12.

> "Criminals may be willing to run greater risks (or they may have a weaker sense of morality) than the average citizen, but if the expected cost of crime goes up without a corresponding increase in the expected benefits, then the would-be criminal—unless he or she is among that small fraction of criminals who are utterly irrational—engages in less crime, just as the average citizen will be less likely to take a job as a day laborer if the earnings from that occupation, relative to those from other occupations, go down." J. Wilson, Thinking About Crime 175-176 (1975).

The punitive aspect of prison serves a second purpose for society—retribution. "The law is the witness and external deposit of our moral life." O. Holmes, The Path of Law, in Collected Legal Papers 167, 170 (1920). The criminal law serves our "moral life" by expressing our outrage at crime by punishing criminals. See *Roberts*, *supra*, 2 Cal. 4th, at 316, 826 P. 2d, at 298; *Gregg*, *supra*, 428 U. S., at 183; Note, Causation in the Model Penal Code, 78 Colum. L. Rev. 1249, 1258-1259 (1978). Although criticized by some scholars, retribution "is the oldest theory of punishment, and the one that still commands considerable respect from the general public." 1 LaFave & Scott, *supra*, § 1.5(a)(6), at 35.

Frustrating this purpose is particularly dangerous. Retribution is intended to maintain respect for the law. If criminals are not punished appropriately, then people may start taking the law into their own hands. See *ibid.* "It may certainly be argued, with some force, that it has never ceased to be one object of punishment to satisfy the desire for vengeance." O. Holmes, The Common Law 40 (1881). If society's sense of justice is not satisfied, disorder becomes a real threat.

> "To maintain order in society, the legal system must not only provide for a safe society, it must also provide a society that is satisfied with the workings of the system. The law-abiding populace must be assured that those who have done wrong are punished, and that those who are innocent are protected. Otherwise, society will fail in its most basic duty." Rychalk, Society's Moral Right to Punish: A Further Explanation of the Denunciation Theory of Punishment, 65 Tulane L. Rev. 299, 320-321 (1990).

Each judicial improvement of the prisoner's lot runs the risk of alienating society from the criminal justice system. When society's representatives in the legislature set the punishment for crimes, a certain harshness of prison life is taken into the calculus of desert. "Prisons also reflect the cultural sensibilities of the larger society in which they are located [citation]. Imprisonment occupies an integral role both in the production and in the reproduction of social norms, values, attitudes, and beliefs." R. Wright, In Defense of Prisons 3 (1994).

When an unelected federal court ameliorates prison life *ex post facto*, the equation of guilt and punishment is upset. As the criminal is treated more and more like the average citizen, the bonds that hold us together further fray. Conditions of prison life that are "restrictive and even harsh" are constitutional unless found cruel under contemporary standards. Instead, "they are part of the penalty criminals pay for their offenses against society." *Rhodes* v. *Chapman*, 452 U. S. 337, 347 (1981). If we are to maintain social order, the courts must respect society's calculus of punishment.

B. Institutional Needs.

Increasing the rights of prisoners has further costs. Running a prison is an exceptionally difficult endeavor. The administration must supply the prisoners with food, clothing, shelter, medical care, work, and recreation while keeping their charges from harming the outside world, the staff, and each other. Therefore, courts give prison administrators "broad discretionary authority . . . because the administration of a prison is 'at best an extraordinarily difficult undertaking . . . .' " *Hewitt* v. *Helms*, 459 U. S. 460, 467 (1983), quoting *Wolff* v. *McDonnell*, 418 U. S. 539, 566 (1974).[4]

If a federal court intrudes too far into the administration of a prison, the costs can be very high in both money and lives. A particularly vivid example of the high cost of judicial intrusiveness can be found in the tragedy of the Texas prison system.

4. *Hewitt* was disapproved, if not "technically . . . overrule[d]" on other grounds in *Sandin* v. *Conner*, 63 U. S. L. W. 4601, 4605, n. 5 (slip op., at 10, n. 5) (June 19, 1995).

For many years Texas had a penal system that it could be proud of. While authoritarian, Texas' penal system had a superb safety record, low costs, and an unmatched prisoner education system. See J. DiIulio, The Old Regime and the *Ruiz* Revolution: The Impact of Judicial Intervention on Texas Prisons, in Courts, Corrections, and the Constitution 51, 61 (J. DiIulio ed. 1990). In 1974, a federal district court judge in Texas combined several prisoner civil rights suits into one class action suit, and through this case took over the Texas penal system. See *id.*, at 59. *Ruiz* v. *Estelle*, 503 F. Supp. 1265 (S.D. Tex. 1980).

When the suit was contested, there was controversy over Texas' control model of prisons. Some experts credited it with maintaining "the only safe, clean, cost-effective prison system in the country. Others denounced [the Texas Department of Corrections] as a repressive agency that treated its inmates like slaves." DiIulio, *supra*, at 60.

The District Court was in total agreement with the critics. It issued a 248-page opinion requiring many detailed changes in the way Texas ran its prisons. Among the many requirements were:

> "an end to the use of building tenders; a requirement that the agency double its officer force and retrain veteran officers; a revision in the procedures for handling inmate grievances; a complete overhaul of the prisoner classification system that would reduce the number of maximum security designations; a division of the prison population into management units of not more than five hundred each; a radical improvement in health delivery systems that would give inmates easy access to state-of-the-art medical treatment; and the provision of a single cell for each inmate." *Ibid.*

These mandates, the exceptional contentiousness of the litigation, and the District Court's close supervision of Texas prisons helped turn the Texas penal system into an expensive, dangerous disaster. At the low point of the litigation, violence was endemic, discipline was minimal, and staff morale was plummeting. Gang rape and contract murder had become common. See *id.*, at 53. More serious violence occurred in the years 1984-1985 than in the previous decade. *Id.*, at 54. Furthermore "inmate participation in treatment and educational

programs became erratic, the once-immaculate inmate living quarters ceased to sparkle, and recreational privileges were curtailed." *Ibid.* All of this was achieved at a cost of over a billion dollars. *Id.*, at 68.

The old prison system was not perfect. Its use of prisoner trustees called "building tenders" required an unsustainably high level of oversight from prison authorities. See *id.*, at 55-57. This problem played a role in the downfall of the Texas prison system. See *id.*, at 58-59. But the main reason for this decline was judicial overreaching. The District Court, along with poor administrators and "grandstanding state policymakers . . . helped to put asunder, [the Texas system] by making the task of formal prison governance inside Texas prisons much harder and much less personally rewarding." *Id.*, at 69.

Prisons are very complex institutions where sudden changes can have unforeseen, disastrous results. One of the main factors in the problems caused by the *Ruiz* litigation was the District Court's failure to appreciate the unintended consequences of its attempts to reform. See *id.*, at 70. Such problems demonstrate the wisdom of this Court's command to defer to the prison administrator's evaluation of penological objectives. See *O'Lone* v. *Estate of Shabazz*, 482 U. S. 342, 349-350 (1987). Courts, which lack both the knowledge and resources to administer prisons, are better suited to safeguarding basic principles; the details of prison life are better left to the legislative and executive branches. See *Procunier* v. *Martinez*, 416 U. S. 396, 404-405 (1974).

Any effort by a federal court to make prison life comparable to that outside the prison walls is contrary to these principles. The higher a court raises prisoner standards, the more detailed will be its commands. Once a court's order goes beyond basic human needs, the border between proper and improper is much more discretionary. A court will therefore have to give much more detailed commands so that its view of what is proper is implemented. This explains the extraordinary level of detail of the orders in some prisoner rights cases, such as *Ruiz* and the present case. See *ante*, at 9; *post*, at 18. *Ruiz* demonstrates that such burdensome detail can make the difficult job of running a prison intolerable. If left unchecked, the Ninth Circuit's decision in the present case will provide further proof.

C. Libraries, Litigation, and the Prison System.

The level of punishment imposed by a prison can be influenced by the access to courts accorded prisoners. This Court has recognized a prisoner's right to access to the courts. See *Bounds* v. *Smith*, 430 U. S. 817, 824 (1977). If this right is sufficiently extended, "meaningful access," see *ibid.*, becomes a subsidy to prisoner litigation, as the state is required to bear more and more of the prisoner's litigation burdens. This level of access is incompatible with the punitive needs of prison.

Subsidy to litigation undermines the prison system in many ways. Some prisoners use litigation to harass prison officials and extort favors from them. V. Fox, Correctional Institutions 77 (1983). Inmates have "essentially nothing left to lose, including time, by prosecuting such actions and they may gain something even if it is nothing but the satisfaction of harassing, inconveniencing, and annoying those who have them in charge." *Wycoff* v. *Brewer*, 572 F. 2d 1260, 1267 (CA8 1978). Thus litigation becomes a leisure activity for many prisoners. See Fox, *supra*, at 77. The reality of this conclusion is underscored by the fact that the overwhelming majority of prisoner-initiated litigation is spurious. See Doumar, Prisoners' Civil Rights Suits: A Pompous Delusion, 11 Geo. Mason L. Rev. 1, 18 (1988); see, *e.g.*, *Lane* v. *Hutchison*, 794 F. Supp. 872, 882 (E.D. Mo. 1992) ("the brewing of coffee in a kettle instead of a coffee pot"); *Walker* v. *Goldsmith*, 902 F. 2d 16, 16 (CA9 1990) (Sixth Amendment right to venire members whose names begin with W, X, Y, or Z).

Less spurious litigation also undermines prison authorities. The threat of inmate suits makes prison authorities reluctant to administer punishment and makes prisoners more difficult to control.

> "[T]he prisoners' rights movement has clearly affected prison life. It has politicized prisoners, and it has provoked a more militant inmate posture. . . . ¶ Because prison administrators are fearful of inmate suits, they are sometimes reluctant to enforce punishment. Prison guards have borne the brunt of administrative reluctance to punish. Not infrequently, guards report disciplinary violations only to have the violations revoked by the warden." Engel &

Rothman, The Paradox of Prison Reform: Rehabilitation, Prisoner's Rights and Violence, 7 Harv. J.L. & Pub. Pol'y. 413, 431 (1984).

The result is predictable:

"As the courts mandate changes in institutional policies, staff and inmates lose respect for the authority of the prison personnel. This limits the administrators' ability to run the prison effectively. The loss of authority, coupled with fear of litigation and negative media coverage, has caused a shift in the control that was historically reserved for prison administrators and further threatens the lives of inmates and guards. Daily, guards face the fear of being taken hostage or being assaulted." *Id.*, at 433.

Inmate litigation is also expensive. While many suits are dismissed at a relatively early stage, the unwillingness and inability of most prisoners to settle early leaves the task of screening cases to the courts, creating considerable administrative burdens.

"The demands of the prisoners frequently are unrealistically high and unlikely to succeed at all. They are often brought because the prisoner faces little or no expense in bringing them. Providing prisoners with free legal counsel for civil suits can only serve to increase their willingness to bring such suits." Doumar, *supra*, 11 Geo. Mason L. Rev., at 19.

One study estimated that these suits cost over 100 million dollars a year—over 10 percent of the total federal judicial budget at the time. See Hanson, What Should be Done When Prisoners Want to Take the State to Court, 70 Judicature 223, 225 (1987). Prisoner suits have grown like wildfire over the last two decades. Any expansion of this right will open the floodgates wider and further burden prison administration.

Raising prisoner access to the courts can also erode citizens' faith in the criminal justice system. Litigation is a very expensive and time-consuming ordeal for the ordinary law-abiding citizen. Many valid constitutional claims are too expensive for the average citizen to raise in court. See, *e.g.*, *Powers* v. *Ohio*, 499 U. S. 400, 415 (1991); *Rose* v. *Mitchell*, 443 U. S. 545, 558 (1979). It thus takes a relatively small improvement in the

prisoners' ability to litigate to give them greater effective access to the courts than average citizens. See Part III C *post*, at 20-21.

Placing the prisoners' access above the law-abiding citizens' can only reinforce the public's impression that the prison system insufficiently punishes prisoners. See Curniden, Hard Times, 81 A.B.A. J. 72, 73 (July 1995). A further weakening of public confidence in our institutions is inevitable. Such a corrosion of society is a high price to pay for the dubious benefits of encouraging overwhelmingly frivolous litigation.

II. The right to libraries found in *Bounds* v. *Smith* is very limited.

The right to libraries found in *Bounds* v. *Smith*, 430 U. S. 817 (1977) needs careful handling. Excessive expenditures and judicial intrusion overburden the prisons and alienate society. See Part I C *ante*, at 11-13. For this reason, *Bounds* must be construed narrowly. Fortunately, such construction is consistent with this Court's prisoner rights decisions.

Bounds v. *Smith*, 430 U. S. 817 (1977) was a limited break from this Court's previous treatment of access to the courts. Prior authority primarily removed state barriers to prisoner litigation. Thus, prison officials could not prevent prisoners from filing federal habeas corpus petitions, *Ex parte Hull*, 312 U. S. 546, 549 (1941), states could not require indigent prisoners to pay for trial transcripts, *Griffin* v. *Illinois*, 351 U. S. 12, 20 (1956), or pay docket fees for appeals or habeas petitions, *Burns* v. *Ohio*, 360 U. S. 252, 257 (1959); *Smith* v. *Bennett*, 365 U. S. 708, 708-709 (1961), and states could not prohibit inmates from giving legal assistance to each other without the state providing some alternate form of assistance. *Johnson* v. *Avery*, 393 U. S. 483, 490 (1969).

One decision arguably required states to act positively to encourage litigation. In *Douglas* v. *California*, 372 U. S. 353, 357 (1963), this Court required states to provide indigent defendants with counsel for any appeal as of right from a conviction. *Douglas* dealt with a defense against an action initiated by the state; the appeal as of right is an inevitable, logical conclusion to the state-initiated criminal conviction. This

relationship between the appeal as of right and the trial limited *Douglas*. Discretionary appeals and habeas corpus were different from *Douglas* because they were further removed from the trial. See *Ross* v. *Moffitt*, 417 U. S. 600, 615-616 (1974); *Pennsylvania* v. *Finley*, 481 U. S. 551, 557 (1987).

Bounds placed a greater affirmative burden on the courts to aid inmate litigation than had previous decisions.[5] This Court inferred from prior right to access cases that the state had an affirmative obligation to make sure that inmates had "meaningful access to the courts." *Bounds*, 430 U. S., at 824. Fulfilling this obligation required a state to provide its prisoners with a law library or an adequate substitute to assist inmates' legal research. *Id.*, at 828.

Although *Bounds* went beyond prior cases, its journey was short. It did not impose a right to general legal assistance. *Bounds* was justified by a perceived need to help prisoners seek "new trials, release from confinement, or vindication of fundamental civil rights." *Id.*, at 827. Thus the right to access was not concerned with general civil litigation; it only protected access to file civil rights claims or habeas corpus petitions. See *id.*, at 827-828. This limit was effectively mandated by precedent, as *Bounds* drew heavily from *Avery*, *supra*, and *Wolff* v. *McDonnell*, 418 U. S. 539 (1974), cases that dealt with access

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5. The *Bounds* Court noted that its decision was "a reaffirmation of the result reached in *Younger* v. *Gilmore*" 430 U. S., at 828. That case is a two-sentence, per curiam opinion affirming a district court's decision to require a prison law library. *Younger* v. *Gilmore*, 404 U. S. 15 (1971).

   In spite of this earlier decision, *Bounds* did make new law. It understood that "*Gilmore* is not a necessary element in the preceding analysis" in *Bounds* supporting the right to libraries. 430 U. S., at 828-829. The "precedential weight" of *Gilmore* that *Bounds* claimed to reinforce its decision was small. See *Metromedia, Inc.* v. *San Diego*, 453 U. S. 490, 500 (1981). *Gilmore* "made no pretense of containing any reasoning at all." *Bounds*, 430 U. S., at 837 (Rehnquist, J., dissenting). The opinion did not indicate what right it creates; it simply affirmed a lower court's decision with a bare citation to *Johnson* v. *Avery*, *supra*. The extensive reasoning it gave to support its position demonstrates that *Bounds* did break new ground.

to file habeas petitions and civil rights actions respectively. See *id.*, at 578-579.

The *Bounds* Court was motivated by a fear that, without the ability to do basic legal research, prisoners would not be able to protect their fundamental constitutional rights. *Bounds* gave access to file civil rights and habeas corpus actions "because they directly protect *our most valued rights*." 430 U. S., at 827 (emphasis added). The civil rights *Bounds* sought to protect were "fundamental." *Ibid.*

It is unlikely that there are any undiscovered fundamental rights. The rights revolution that started in the 1960's long ago unearthed what was truly fundamental. For habeas corpus cases, fundamental procedures are those "central to an accurate determination of innocence or guilt." *Teague* v. *Lane*, 489 U. S. 288, 313 (1989) (plurality). It is "unlikely that many such components of basic due process have yet to emerge." *Ibid.* With decades of floodstage prisoner rights litigation under the bridge, there is no reason to believe that prisoner rights law is any different.

It requires relatively little research to bring to a court's attention a claim that a fundamental right has been violated. These are "classic" examples of constitutional violations. See *ibid.*, quoting *Rose* v. *Lundy*, 455 U. S. 509, 544 (1982) (Stevens, J., dissenting). The classics of constitutional law are well-known and readily found through elementary research. Therefore, a very limited library can satisfy *Bounds*.

An extensive law library is only necessary to engage in innovative, groundbreaking litigation. Such innovation was not contemplated by *Bounds*. Indeed, *Teague*, by strictly limiting the retroactivity of new rules, precludes most innovation from federal habeas corpus. Compare 489 U. S., at 310, with *Bounds*, *supra*, 430 U. S., at 826, n. 14. *Bounds* does not license prisoners to engage in legal innovation.

Bounds was further limited by what this Court expected prisoners to do with their legal research right. The right to access was not a right to competent prosecution of the habeas corpus or civil rights action. If meaningful access meant placing prisoners on or near equal footing with their state opponents, then *Bounds* would have included a right to counsel; litigation is

too complicated for a nonattorney to pursue successfully. Cf. *Powell* v. *Alabama*, 287 U. S. 45, 69 (1932). While appointed counsel was sufficient to satisfy *Bounds*, it was not necessary. Access to an adequate library was all that was necessary. See *Bounds*, 430 U. S., at 830.

Bounds did not guarantee competent prosecution of the action—it simply gave the prisoner the tools to present basic claims to a court in a reasonable manner. Thus, "our main concern here is 'protecting the ability of an inmate to prepare a petition or a complaint . . . .' " *Id.*, at 828, n. 17, quoting *Wolff*, *supra*, 418 U. S., at 576. Once the prisoner made a "meaningful *initial* presentation to a trial court," *id.*, at 828 (emphasis added), the trial court would presumably winnow out the spurious petitions and try to find counsel for the few remaining adequate claims. *Bounds* meant no more than to give a prisoner's claim a somewhat better chance of catching the trial court's eye.

III. The Ninth Circuit's decision violates *Bounds*.

Whatever may be the proper limits of *Bounds* v. *Smith*, 430 U. S. 817 (1977), the decision below exceeded them. Its contradiction of precedent, micromanagement of prisons, and lavish expansion of inmate prerequisites provide a textbook example of how not to decide an inmate rights suit.

A. Contradicting Precedent.

The most egregious error of the lower court was its direct contradiction of *Bounds*. The Ninth Circuit held that the ADOC must provide prisoners with both an adequate law library *and* extensive assistance in legal research and drafting. See *Casey* v. *Lewis*, 43 F. 3d 1261, 1270 (1994). *Bounds* never required prisons to provide *both* amenities. "We hold, therefore, that the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries *or* adequate assistance from persons trained in the law." 430 U. S., at 828 (emphasis added); *id.*, at 830, 832.

The Ninth Circuit justified its evasion of the *Bounds* disjunctive by focusing on *Bounds*' declaration that access to the courts must be "meaningful." See *id.*, at 822. From this, the Ninth Circuit inferred that the ADOC must provide legal assistance to functionally illiterate and non-English speaking prisoners in order to insure that these prisoners had meaningful access to the courts. *Casey*, 43 F. 3d, at 1267. The court below supported this position by stating that "[t]he reliance upon fellow prisoners who are not trained in the law simply does not suffice as an adequate substitute." *Ibid.*

This facile rationalization ignores the context of the precedent it contradicts. The *Bounds* decision relied heavily on *Johnson* v. *Avery*, 393 U. S. 483 (1969). See *Bounds*, *supra*, 430 U. S., at 823-824. In *Avery*, this Court held that the state cannot prevent inmates from helping other prisoners file legal papers unless the prison provides some adequate substitute for legal assistance. 393 U. S., at 490. The *Avery* Court determined that barring "jail-house lawyers" would prevent the many poorly educated or illiterate prisoners from having proper access to the courts. See *id.*, at 487. Implicit in this assertion is the recognition that "writ-writers" can help get access for otherwise incapable prisoners.

Bounds' guarantee of meaningful access must be read in this context. *Avery* demonstrated that this Court knew that many inmates were incapable of doing legal research and writing. Yet the *Bounds* Court had great faith in the legal capabilities of the more sophisticated prisoners. "More importantly, this Court's experience indicates that pro se petitioners are capable of using lawbooks to file cases raising claims that are serious and legitimate . . . ." *Bounds*, 430 U. S., at 826-827. Thus the *Bounds* Court held that the right to meaningful access was satisfied through libraries alone; this Court implicitly recognized that "writ-writers" would give adequate help to the illiterate or ignorant. The decision below cannot stand in light of this reality.

B. Micromanagement.

One principle has remained constant through this Court's prisoner rights jurisprudence—courts must defer to the expertise and discretion of prison administrators to manage their prisons.

See, *e.g.*, *Sandin* v. *Conner*, 63 U. S. L. W. 4601, 4604 (slip op., at 9) (June 19, 1995); *O'Lone* v. *Estate of Shabazz*, 482 U. S. 342, 353 (1987); *Hewitt* v. *Helms*, 459 U. S. 460, 467 (1983); *Jones* v. *North Carolina Prisoners' Union*, 433 U. S. 119, 126 (1977); *Meachum* v. *Fano*, 427 U. S. 215, 225 (1976). The problems of running a prison are extraordinarily difficult, see *Hewitt*, *supra*, 459 U. S., at 467, and cannot be solved through judicial decree. See *Procunier* v. *Martinez*, 416 U. S. 396, 404-405 (1974). As courts are ill-equipped to run prisons, their administration must be left to the executive and legislative branches. See *Turner* v. *Safley*, 482 U. S. 78, 84-85 (1987). This is particularly important when federal courts are dealing with state prisons; federalist principles require even greater judicial deference. *Id.*, at 85.

The meticulously detailed relief ordered by the Ninth Circuit ignores these well-established rules. Instead of giving ADOC officials the necessarily broad discretion, the court below chose to pick such nits as the maximum mark-up for legal supplies available for purchase by prisoners, *Casey*, *supra*, 43 F. 3d, at 1280 (Appendix A),[6] the types of supplies that must be available for sale, *ibid.*, the type and quantity of supplies provided to indigent prisoners, *id.*, at 1280-1281, the procedure and deadlines for processing a prisoner's request for supplies or services, *id.*, at 1281, the manner in which ADOC must advise staff that prisoner legal materials may not be read during photocopying, *id.*, at 1280, the qualifications for librarians, *id.*, at 1275, the noise level of libraries, *id.*, at 1276, the contents of forms for requesting legal assistance, *id.*, at 1274, the processing of these forms, *ibid.*, the selection number, training, and retention of legal assistants, *id.*, at 1276-1277, the legal training program for prisoners, *id.*, at 1277-1278, the times when the library must be open, *id.*, at 1273, and the manner in which the ADOC may limit a prisoner's access to the library. *Id.*, at 1272-1273. Even such a trivial decision as to which publisher's edition of the

6. Appendix A of the Court of Appeals decision consists of the injunction ordered by the District Court. See *id.*, at 1272. The Ninth Circuit affirmed all of the District Court's order discussed in Part III B of this brief. See *ante*, at 3, note 2, for what aspects of the District Court's order that were reversed by the Ninth Circuit.

U. S. Code to stock requires approval of the Court or Special Master. *Id.*, at 1276.

This is a dangerous precedent. Such detailed, intrusive oversight can be poisonous to a prison system by robbing administrators of the discretion to run safe and secure prisons. See *Hewitt*, *supra*, 459 U. S., at 467. This is why "the safe and efficient operation of a prison on a day-to-day basis has traditionally been entrusted to the expertise of prison officials . . . ." *Id.*, at 470.

No amount of judicial wisdom can equal the expertise gained through the actual running of a prison. See C. Cripe, Courts, Corrections, and the Constitution: A Practitioner's View, in Courts, Corrections, and the Constitution 268, 279 (J. DiIulio ed. 1990). The more detailed a court's orders are, the more its ignorance of prison life will be exposed. This can only add one more "Herculean obstacle" to the administrator's task. *Procunier*, *supra*, 416 U. S., at 405.

Legalistic detail has an even more dangerous effect. Close, demanding oversight of a prison by a court saps the authority needed to run the prison and administration. When the courts interfere with prison management through judicial decree, inmates doubt the authority of the staff, and the staff questions the ultimate authority of the prison administrators. See Feeley & Hanson, The Impact of Judicial Intervention on Prisons and Jails: A Framework for Analysis and a Review of the Literature, in Courts, Corrections, and the Constitution, *supra*, at 17. "This in turn leads to a decline in staff morale, an increase in staff turnover, and an increase in the unruliness of clientele groups." *Id.*, at 17-18. The closer the judicial scrutiny, the worse this problem will become. Thus federal courts must not be allowed to be seen as the managers of prisons.

"[T]he involvement of federal courts in the day-to-day management of prisons" simply squanders "judicial resources with little offsetting benefit to anyone." *Sandin*, *supra*, 63 U. S. L. W., at 4604. The Ninth Circuit has engaged in precisely the form of micromanagement most recently condemned in *Sandin*. It is time for this Court to unshackle the ADOC and give them the discretion they need.

C. Extreme Accommodation.

The final mistake of the Ninth Circuit was its extreme accommodation of prisoner interests. These privileges give prisoners greater access to a variety of legal resources than law-abiding citizens. Such lavishness is contrary to the core beliefs that motivate our criminal justice system. See Part I C *ante*, at 11-13.

One example of the Ninth Circuit's excessive generosity is the library hours it mandates. Except for university libraries, which are usually not open to the public, it is extremely rare for a library to be open 60-80 hours a week, let alone be open until 9:00 or 10:00 p.m. See *Casey*, *supra*, 43 F. 3d, at 1273, ¶ B.1.b. The Ninth Circuit has given Arizona prisoners easier and more convenient library access than law-abiding citizens.

The exceptional level of legal assistance given to prisoners is another luxury foreign to most private citizens. Prisoners are entitled to trained law clerks, *id.*, at 1274-1275, and either attorneys, paralegals, or extensively trained legal assistants. *Id.*, at 1276-1277. At least some of these assistants must be bilingual. *Id.*, at 1277. The Ninth Circuit attempts to justify its largesse by noting that "the restrictions on a prisoner's liberty attendant to imprisonment prevents the prisoner from enlisting the assistance of his family, friends, and a myriad of social services and legal aid organizations that would otherwise be available." *Id.*, at 1268.

This grossly overestimates the availability of resources to the average citizen. The overwhelming majority of "family and friends" have no training in the law.[7] The present case demonstrates that prisoners already receive the help of "a myriad of social services." The prisoners in the present case have been represented by the National Prison Project of the ACLU, a well-known "social service organization."

For the most part, law-abiding citizens do not receive this level of assistance. Some of the poorest may get some help from legal aid programs—most will be left to their own resources.

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7. Counsel for *amicus* frequently encounters hopelessly lost citizens attempting *pro per* legal research at the California State Law Library.

Because most jurisdictions grant attorneys cartel power over providing legal services, see Rhode, Policing the Professional Monopoly: A Constitutional and Empirical Analysis of Unauthorized Practice Prohibitions, 34 Stan. L. Rev. 1, 4 & n. 7 (1981), private citizens will not be able to rely on the relatively inexpensive legal assistants given to the prisoners by the Ninth Circuit. Those outside prison will have to go it alone, or incur the often prohibitive expense of private counsel. See *id.*, at 98. The Ninth Circuit has thus given prisoners a luxury most of the law-abiding public cannot afford.

Imprisonment should not create new privileges for the prisoner. Prison is about the loss of rights and privileges. See *Hudson* v. *Palmer*, 468 U. S. 517, 524 (1984); *Rhodes* v. *Chapman*, 452 U. S. 337, 347 (1981). The Ninth Circuit broke this covenant with the public by granting prisoners a litigation subsidy more extensive than anything given to the average citizen. Our criminal justice system cannot abide such unearned luxuries. See Part I A *ante*, at 5-8.

D. The Logical Conclusion.

Taking the Ninth Circuit's reasoning to its logical conclusion would require states to provide full-time counsel for its prisoners. As noted earlier, the *Bounds* Court knew that many prisoners were incapable of doing legal work on their own, yet it required only that states provide prisoners with libraries and no other legal assistance. See *ante*, at 17. The Ninth Circuit's expansion of "meaningful assistance" to include legal aid must be read in this context.

Bounds was not so concerned about the prisoners prosecuting their litigation successfully; it merely wanted to insure that prisoners could present their serious claims to the District Court. See *Bounds* v. *Smith*, 430 U. S. 817, 828 & n. 17 (1977). The Ninth Circuit was much more concerned with helping prisoners better prosecute their actions.

In noting the advantages of the legal assistance program, the court below stated that such assistance would lead to: "more efficient and skillful handling of prisoner cases, the avoidance of disciplinary problems associated with writ writers, and the mediation of many prisoner complaints that would otherwise

burden the courts." *Casey* v. *Lewis*, 43 F. 3d 1261, 1268 (CA9 1994).[8] Such reasoning leads down the slippery slope of a general right to counsel. The Ninth Circuit's comment about relieving its own burden, *id.*, at 1268, n. 6, is especially disturbing. The Constitution does not authorize the federal judiciary to impose a financial burden on a state's taxpayers for the mere purpose of easing its own staffing problems.

If courts are serious about making prisoners effective litigators, as the Ninth Circuit is, then prisoners must be given a right to appointed counsel. No amount of help from paralegals or legal assistants will enable a lay prisoner to represent himself nearly as competently as could an attorney. The attorney's knowledge, training, and experience provide a near-overwhelming edge over the frequently ignorant and ill-educated prisoner. See *Powell* v. *Alabama*, 287 U. S. 45, 69 (1932). The actions protected by *Bounds* are no less complicated than the criminal trial in *Powell*. Habeas corpus is one of the most complex areas of the law. As one judge noted, "[h]abeas corpus is as unfamiliar to a lot of lawyers as atomic physics." Godbold, Pro Bono Representation of Death Sentenced Inmates, 42 Rec. AB City N.Y. 859, 863 (1987). Taken to its logical conclusion, the Ninth Circuit's definition of meaningful access would require states to provide counsel to guide prisoners through this thicket.

This goes far beyond what this Court has been willing to give prisoners. In *Pennsylvania* v. *Finley*, 481 U. S. 551 (1987), this Court explicitly refused to give prisoners such expansive rights. "We have never held that prisoners have a constitutional right to counsel when mounting attacks upon their convictions [citation], and we decline to so hold today." *Id.*, at 555. The states are not required "to duplicate the legal arsenal that may be privately retained . . . but only to insure the indigent defendant an adequate opportunity to present his claims fairly . . . ." *Id.*, at

8. As the court below noted, *Bounds* made similar claims in support of giving prisoners a legal assistance program. See *Bounds*, *supra*, 430 U. S., at 831. But this was merely an "alternative" to the adequate remedy of law libraries. *Id.*, at 830. More importantly, the same passage touting the advantages of assistance programs contemplates serving the legal needs of prisoners through a nationwide staff of lawyers. *Id.*, at 831-832.

556, quoting *Ross* v. *Moffitt*, 417 U. S. 600, 616 (1974). The court below has started down a road that will lead to placing this type of burden on the states. It is up to this Court to put the Ninth Circuit back on the right track.

IV. *Bounds* needs to be clarified.

Bounds v. *Smith*, 430 U. S. 817 (1977) needs clarifying. The confusion in the lower courts over whether meaningful access requires both a library and legal assistance, compare *Hooks* v. *Wainwright*, 775 F. 2d 1433, 1436-1437 (CA11 1985), with *Casey* v. *Lewis*, 43 F. 3d 1261, 1267-1268 (CA9 1994), demonstrates that *Bounds* has some tensions that need to be resolved. Furthermore, the decision below shows a broad misunderstanding of what *Bounds* means. See Part III *ante*, at 16-23. Clarifying *Bounds* should limit future misinterpretation.

This Court should therefore make clear that *Bounds*' guarantee of meaningful access, see 430 U. S., at 828, is very limited. The term "meaningful" cannot drive the decision. Meaningful access does not mean a guarantee of the ability to conduct effective litigation or push the envelope of legal theory. Such a guarantee would place an intolerable burden on the states, eventually requiring them to supply prisoners with counsel. See Part III D *ante*, at 21-23. This is far beyond what this Court has been willing to compel states to give prisoners. See *Pennsylvania* v. *Finley*, 481 U. S. 551, 556-557 (1987).

Instead, meaningful access means giving the prisoners the tools to present fundamental civil rights and habeas claims to the trial court.[9] The *Bounds* Court had great confidence that prisoners could make adequate use of law libraries. See 430 U. S., at 827. This assessment is informed by the inevitable presence of "writ writers" in every prison who will help fashion petitions for those who cannot do so themselves. See Part III A *ante*, at 17. States must only give prisoners the tools to sue

9. Odd as it may sound to refer to nonfundamental constitutional rights, such rights do exist in the case law, whether or not they are really in the Constitution. See *Rose* v. *Lundy*, 455 U. S. 509, 543, n. 8 (1982) (Stevens, J., dissenting).

them; they need not show prisoners the best avenues of attack. Thus *Bounds* is satisfied by providing prisoners with a library that will let them bring fundamental claims to the attention of a court.

This Court should also reiterate the deference owed to the decisions of prison administrators in fulfilling *Bounds*. This Court has noted in other contexts that the decisions of prison administrators are owed considerable deference. See, *ante*, at 17. A clear statement that the Ninth Circuit's micromanagement of prisons is improper is once again necessary. Cf. *Sandin* v. *Conner*, 63 U. S. L. W. 4601, 4604 (June 19, 1995).

This means that the lower courts should keep their scrutiny of state prisons to a minimum. What relief courts can order should be in the form of broad goals, with the details left to the discretion of prison administrators. Only after an affirmative showing of an administrator's lack of good faith should a court intervene in the details of running the prison.

Bounds provides an example of this deference. Once the District Court found that North Carolina had to provide a prison library, it let the state come up with its own plan for implementing the order. See *Bounds*, *supra*, 430 U. S., at 818-819. This plan was affirmed by the District Court with only minor adjustments. See *id.*, at 820, n. 6. The Court of Appeal affirmed with a similarly light touch. See *id.*, at 820. This Court did not intrude on North Carolina's exercise of discretion. While it questioned some of the library choices, see *id.*, at 819-820, n. 4, it upheld North Carolina's minimally changed plan. See *id.*, at 833.

Federalism places important constraints upon a federal court's involvement with prison management. See *Turner* v. *Safley*, 482 U. S. 78, 85 (1987). When a federal court attempts to set the prices of prison legal supplies, see *ante*, at 18, it affronts the dignity of both the state of Arizona and the federal courts. Perhaps most importantly, the appointment of a Special Master to peer majestically over the prison administrator's shoulder, cf. *Lewis* v. *Jeffers*, 497 U. S. 764, 780 (1990) should be clearly designated a drastic measure to be taken only in extreme circumstances. The judicial takeover of an executive function, and a state one at that, strikes at the heart of both

federalism and the separation of powers. This Court must put an end to it.

Lacking both the sword and the purse, courts were supposed to be the least dangerous branch of government. See The Federalist No. 78, p. 465 (C. Rossiter ed. 1961) (A. Hamilton). This should be particularly true in prisoner rights cases. The ecology of a prison is delicate; too much change can be dangerously disruptive to the prison's balance of power. See C. Cripe, Courts, Corrections, and the Constitution: A Practitioner's View, in Courts, Corrections, and the Constitution 268, 276-277 (J. DiIulio ed. 1990). As this Court understands, "the problems of prisons in America are complex and intractable and, more to the point, they are not readily susceptible to resolution by decree." *Procunier* v. *Martinez*, 416 U. S. 396, 404-405 (1974).

Prisons were once deteriorating national disgraces. Then a nationwide group of dedicated reformers fixed the bulk of these problems. One might think that it was federal judges that led this change for reform. But that would be wrong. America's prisons were not cleaned up by the federal judiciary, but by a host of prison administrators between 1940 and 1970. J. DiIulio, No Escape 150 (1991). These landmark reforms made vast improvements in the lives of prisoners well before the prisoner rights revolution of the 1970's:

> "One might suppose that judges began to intervene in penal administration in the 1970s because, relative to previous decades, prison and jail conditions were deteriorating. In fact, however, just the opposite is true: Judges started to act as wardens at a moment when, throughout most of the country, prison and jail conditions were no worse than before—in fact, in most cases they were demonstrably better." *Ibid.*

While it is impossible to turn back the clock and put the genie of prison litigation back in the bottle, this Court can limit future abuses. It is not the prisoner who needs protection from the prison anymore; now it is the prison that this Court must protect from overzealous federal judges.

CONCLUSION

The decision of the Ninth Circuit should be reversed.

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